

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 561 - SB 660

March 16, 2015

SUMMARY OF BILL: Creates the *Medical Cannabis Access Act*, effectively legalizing the use of medical marijuana in treating symptoms of various qualifying medical conditions (QMCs). Prior to receiving access to medical cannabis, a patient's general practitioner must complete a full assessment of the qualifying patient's medical history and explain the risks and benefits of medical cannabis to the patient.

In addition to the requirements for all patients, for all patients under 18 years of age, the parent, guardian, or person having legal custody of the patient must authorize usage, and control the acquisition, dosage, and the frequency of use of medical cannabis by the patient.

The patient is authorized to complete enrollment in the Safe Access Program (program) at a participating pharmacy or regulated dispensary. The program will provide the patient with a program identification card. The program is required to approve or deny any initial or renewal application to the program within 30 days of receiving it. The program may only deny an application if the information required is not provided or if the information provided was falsified. A denial is subject to judicial review as vested in the chancery court of Davidson County.

Program identification cards last one year after the date of issuance. A patient is required to inform their general practitioner of any change of address or name within 30 days of such change. Any change not submitted within 30 days will result in a \$25 penalty against the patient. If a patient ceases to have a QMC, the patient's program identification card will be deemed void and any penalties applicable shall apply to the person's non-medical use of cannabis. Should a program identification card be lost, it may be replaced, subject to payment of a \$10 fee. Any violation of the act will result in the revocation of program identification card.

The program will maintain a confidential list of Safe Access program participants. Each card will have an accompanying random program identification number which will be used by law enforcement personnel to verify validity of a patient's legal access to medical cannabis.

Any employee or official of the program or its licensees or another state agency or local government, who knowingly breaches the confidentiality of personal patient information, commits a class B misdemeanor, punishable by a fine of \$1,000 only. A program employee may notify law enforcement about falsified or fraudulent information submitted to the program.

Requires, on or before January 31 of each even numbered year, the Department of Health, Department of Agriculture, and Board of Pharmacy to report to the General Assembly on the performance of the program.

HB 561 - SB 660

Prohibits any patient enrolled in the program from:

- Undertaking any task under the influence of cannabis when doing so would constitute negligence or professional malpractice;
- Using cannabis:
 - In a school bus or other form of public transportation;
 - On school grounds;
 - In any correctional facility;
 - In any public place;
 - In any licensed substance abuse treatment facility in Tennessee; or
 - Where exposure to cannabis significantly and adversely affects the health, safety, or welfare of children.
- Operating, navigating, or being in the actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of cannabis, however, a registered patient shall not be considered to be under the influence solely for having cannabis metabolites in the patient's system.

Does not require any government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of cannabis or for any employer to accommodate medical cannabis in any workplace. Creates a Class C misdemeanor for any person who makes a fraudulent representation of any fact or circumstance relating to the use of medical cannabis to a law enforcement official.

Licensed producers registered under the act may possess, cultivate, harvest and deliver cannabis or related products to a licensed processor. Licensed processors may possess, process, package and deliver cannabis or related products to participating pharmacies or regulated dispensaries. The Department of Agriculture shall regulate both licensed producers and licensed processors.

Participating pharmacies and participating dispensaries shall be the point of distribution of medical cannabis to Safe Access program participants. The Board of Pharmacy shall regulate participating pharmacies. The Department of Health shall regulate dispensaries.

No later than 120 days after the effective date, the Commissioners of the Department of Health and the Department of Agriculture along with the Board of Pharmacy shall promulgate rules governing the consideration of applications and qualification of applicants for registration certificates for licensed producers, licensed processors, and participating pharmacies or regulated dispensaries. No later than 120 days after the effective date, the program shall begin to accept applications for the operation of licensed producers, licensed processors, and participating pharmacies or regulated dispensaries. No later than 180 days after the effective date, the program shall provide for at least one public hearing on the granting of an application to at least one licensed producer, one licensed processor, and one participating pharmacy or one regulated dispensary. No later than 210 days of the effective date, the program shall grant at least one registration certificate to a licensed producer, a licensed processor and a participating pharmacy or regulated dispensary; provided, that at least one applicant in each category meets the

requirements of the act. Specifies which periods of the year in which applications will be accepted.

Applications for a licensed producer or processor are required to include a non-refundable application fee of \$250 and further requires details of physical address, description of the facility, personal information of each principle officer and board member of the licensed producer or processor, procedures used to guarantee accurate record keeping, and the proposed security measures to be implemented within the facility. Upon approval of an application, the licensed producer or processor is required to pay a \$1,000 fee to the program and provide additional details of the business, its owners and operators, and the business's physical address. A licensed producer or processor's registration certificate shall expire two years after the certificate is issued. No renewal application may be submitted earlier than 60 days before the expiration date. The program is required to renew producer or processor's licenses no later than 30 days after the receipt of the renewal application. Creates a Class C misdemeanor, punishable by fine only for a producer who dispenses, delivers, or otherwise transfers medical cannabis to any person or entity other than a participating processor, or Program qualifying patient. Creates a Class C misdemeanor, punishable by fine only for a processor who dispenses, delivers, or otherwise transfers medical cannabis to any person or entity other than a participating pharmacy, regulated dispensary, or program qualifying patient. Any person who is an employee of a licensed producer or processor who is guilty of the Class C misdemeanor shall have their registration identification card revoked.

The program is required to issue each principal officer, board member, agent, volunteer and employee of a licensed producer or processor a registry identification card or renewal card within 30 days of receipt of the person's name, address, date of birth, and a fee in an amount established by the program. Each card shall specify the title of the individual in relation to the licensed producer or licensed processor. Barring certain instances, no person will be issued a card if such person has committed a felony offense under the *Tennessee Drug Control Act*. Licensed producers and processors are subject to reasonable inspection by the Department of Health, the Department of Agriculture, and the Board of Pharmacy at any time, however any such Department or Board must provide reasonable notice of an inspection. Licensed producers and processors are protected from prosecution, search and seizure, notwithstanding reasonable inspection.

Creates a 13-member Medical Cannabis Advisory Committee (MCAC). Members shall receive no compensation for their services but shall be eligible for reimbursement of expenses and mileage in accordance with rules promulgated by the Commissioner of Finance and Administration and approved by the Attorney General and Reporter. This act shall take effect July 1, 2015.

ESTIMATED FISCAL IMPACT:

**Increase State Revenue – Exceeds \$21,800/FY15-16 and Subsequent Years
/Board of Pharmacy**

\$8,060,500/FY15-16/General Fund

\$13,144,300/FY16-17 General Fund

**Exceeds \$24,565,000/FY17-18 and Subsequent
Years/General Fund**

**\$1,100/FY15-16/Department of State
\$100/FY16-17 and Subsequent Years/Department of State**

**\$31,500/FY15-16/TBI
\$5,000/FY16-17 and Subsequent Years/TBI**

**Increase State Expenditures – \$2,187,900/FY15-16/General Fund
\$2,048,100/FY16-17 and Subsequent Years
/General Fund
\$152,600/FY15-16/Board of Pharmacy
\$143,300/FY16-17 and Subsequent Years/Board of Pharmacy
\$31,500/FY15-16/TBI
\$5,000/FY16-17 and Subsequent Years/TBI**

**Increase Local Revenue – \$2,762,800/FY15-16
\$4,604,600/FY16-17
Exceeds \$8,681,700/FY17-18 and Subsequent Years**

Increase Local Expenditures – Not Significant

Assumptions:

Regulatory Revenue and Costs:

- There will be a gradual implementation of the program. The Departments of Health and Agriculture will have to promulgate rules and regulations governing the program and begin accepting applications for the licensed producers, processors, and dispensaries within 120 days after the effective date. Within 180 days of the effective date, the Departments will hold a public hearing on the applications of at least one producer, one processor, and one dispensary. Within 210 days of the effective date, the program will grant at least one certificate to a licensed producer, licensed processor, and dispensary. Within 270 days of the effective date, the program will begin to accept applications to provide certificates for additional licensed producers, processors, and dispensaries.
- There will be a one-time increase in state expenditures of \$11,000 associated with rule-making, required public hearing, and mailings and communications to relevant parties.
- It is assumed that there will be three registration identification cards issued, at a fee of \$100 per card, per each licensed producer and processor.
- The following fees are applicable to producers and processors:
 - \$250 application fee (one-time);
 - \$1,000 operation fee (every two years);
 - \$100 registry identification card fee.
- It is assumed that there will be three registration identification cards issued, at a fee of \$100 per card, per each licensed producer and processor.

- According to the Department of Agriculture, it estimates that there will be at least 250 producers and 100 processors who apply for this license in the first year, resulting in application fee revenue of \$87,500 in FY15-16 [$\$250 \times (250 \text{ producers} + 100 \text{ processors})$]. Of these applications, approximately 200 producers and 50 processors will be accepted into the program, resulting in operation and registration identification card fee revenue of \$200,000 [$\{(\$1,000 \text{ operation fee}/2 \text{ years}) + (3 \text{ registration cards} \times \$100 \text{ fee})\} \times (200 \text{ producers} + 50 \text{ processors})$].
- It is estimated that at least 30 additional producers and 10 additional processors will be licensed in year two or relicensed in FY16-17 and subsequent years, resulting in a recurring annual increase in fee revenue of \$242,000 [$\{(\$250 \text{ application fee} + (\$1,000 \text{ operation fee}/2\text{years}) + \$300 \text{ registration identification card fees}) \times 40\} + \{(\$1,000 \text{ operation fee}/2\text{years} + \$100 \text{ fee} \times 3 \text{ registration cards}) \times 250\}$].
- The Tennessee Bureau of Investigation (TBI) will be required to perform a background check on any principal officer, board member, agent, volunteer, or employee prior to being issued a registration identification card.
- The TBI charges a fee of \$42 to perform one background check.
- This will result in an increase in TBI revenue of \$31,500 in FY15-16 ($\$42 \times 250 \times 3$ registrants per each producer or processor); and \$5,040 in FY16-17 and subsequent years ($40 \times \$42 \times 3$ registrants per each producer or processor).
- It is estimated that approximately 100 dispensaries will become licensed or relicensed annually statewide. The initial licensure and renewal fees are \$218 resulting in a recurring increase in revenue of \$21,800 ($\218×100). The Board may have to increase fees greater than this amount if Board revenue is not sufficient to cover the Board's expenditures. The total recurring increase in revenue to the Board of Pharmacy is estimated to exceed \$21,800.
- All producers, processors, and dispensaries will be required to file a business charter with the Department of State.
- The fee is one-time at \$100. There will be revenue of \$35,000 [$(200 + 50 + 100) \times \100] in FY15-16 and \$4,000 in FY16-17 and subsequent years ($40 \times \$100$).
- Revenue from charter fees is allocated, 97 percent to the general fund, and 3 percent to the Department of State. There will be revenue to the general fund of \$33,950 in FY15-16 ($\$35,000 \times 97\%$) and \$3,880 in FY16-17 and subsequent years ($\$4,000 \times 97\%$). There will be revenue to the Department of State of \$1,050 in FY15-16 ($\$35,000 \times 3\%$) and \$120 in FY16-17 and subsequent years ($\$4,000 \times 3\%$).

Participating Individuals:

- In determining the amount of individuals who will participate in this program, the Department of Health was contacted to determine the number of individuals who will qualify due to certain diseases and symptoms.
- The following represents the four major categories of diseases and conditions which fall under the definition of qualifying medical condition and the number of Tennesseans who suffer from such diseases:
 - Cancer: 33,500 diagnoses annually; total, exceeds 100,000.
 - HIV/AIDS : 16,700;
 - Multiple Sclerosis (MS): 10,000;

- Hepatitis-C (HCV): 65,000 - 102,000.
- Other qualifying medical conditions will include: glaucoma, amyotrophic lateral sclerosis (ALS), Crohn's disease, post-traumatic stress disorder (PTSD), or Alzheimer's disease, a chronic or debilitating disease or medical condition or its treatment which include:
 - Cachexia or wasting syndrome;
 - Severe, debilitating, chronic pain;
 - Severe nausea;
 - Seizures, including, but not limited to, those characteristic of a spinal cord injury or nerve damage;
 - Any medical condition for which a patient receives hospice services; and
 - Any other medical condition or its treatment as certified or prescribed by practitioners and approved by the health Department;
 - The amount of those who suffer from such "other qualifying medical conditions" is unknown, but is reasonably assumed to exceed 50,000 people in this state.
- The total number of people in this state who will be eligible for the Safe Access program is estimated to exceed 260,200 [cancer 100,000 + HIV/AIDS 16,700 + MS 10,000 + HCV 83,500 (median within range) + other 50,000].
- After Colorado passed Amendment 20 in 2000, those with certain qualifying medical conditions were able to, beginning July 1, 2001, possess up to 2 ounces of a usable form of marijuana and cultivate not more than 6 marijuana plants.
- In October 2009, federal resources to prosecute medical marijuana patients and caregivers who were in "clear and unambiguous" compliance with state law were decreased effectively leading to a drastic increase in the number of dispensaries in the state, and thus, the number of registrants also increased drastically.
- The following shows the number of registrants (2009-2013) in Colorado as of January 31 of each year:
 - 2009: 5,051
 - 2010: 53,038
 - 2011: 118,895
 - 2012: 85,124
 - 2013: 108,056
- Due to this legislation's immediate adoption of regulated dispensaries, it is estimated that the initial number of registrants in Tennessee will likely be approximately 60 percent of Colorado's 2010 registrant number or 31,823 individuals (53,038 x 60%).
- In the program's second year, it is estimated that there will be approximately 100 percent of Colorado's 2010 registrant number or 53,038.
- As of June 30, 2013 (12th Program Year), the registry contained approximately 106,817 users possessing valid Registry ID cards.
- According to the Colorado Department of Revenue, retail sales of medical cannabis at the close of FY12-13 (12th program year), totaled \$328,646,922.
- The annual revenue realized per average ID holder was \$3,077 (\$328,646,922 / 106,817 ID holders).

FY15-16 Tax Revenue:

- Retail sales of medical cannabis in FY15-16 will be \$97,919,371 (31,823 x \$3,077).
- It is assumed that companies within the industry pay taxes on average net profit of 15 percent. The net profit on which excise tax would be paid is \$14,687,906 ($\$97,919,371 \times 15\%$). The state excise tax rate is 6.5 percent, so the increase in state revenue attributable to excise tax collections will be \$954,714 ($\$14,687,906 \times 6.5\%$).
- Net worth of these companies is estimated to be equivalent to annual sales (\$97,919,371). The franchise tax rate is \$.25 per \$100 of value, so the increase in state revenue attributable to franchise tax collections will be \$244,798 [$(\$97,919,371 / \$100) \times .25$].
- According to the Department of Revenue, since the bill uses the term “certification” rather than “prescription”, sales of medical cannabis will be subjected to sales tax.
- The state sales tax rate is 7.0 percent, so the increase in state revenue attributable to the sales tax collections will exceed \$ 6,854,356 ($\$97,919,371 \times 7\%$).
- Pursuant to Tenn. Code Ann. § 67-6-103(a) (3) (A), local governments receive 4.5925 percent of all state sales tax revenue as state-shared sales tax revenue.
- An increase in local revenue exceeding \$314,786 in FY15-16 ($\$6,854,356 \times 4.5925\%$).
- The average local option sales tax rate is estimated to be 2.5 percent, so the increase in local revenue attributable to the sales tax collections will be \$2,447,984 ($\$97,919,371 \times 2.5\%$).
- The total increase in state sales tax revenue is \$6,539,570 ($\$6,854,356 - \$314,786$).
- The total increase in local sales tax revenue is \$2,762,770 ($\$314,786 + \$2,447,984$).

FY16-17 Tax Revenue:

- Retail sales of medical cannabis in FY16-17 will be \$163,197,926 (53,038 x \$3,077).
- It is assumed that companies within the industry pay taxes on average net profit of 15 percent; the net profit on which excise tax would be paid is \$24,479,689 ($\$163,197,926 \times 15\%$). The state excise tax rate is 6.5 percent, so the increase in state revenue attributable to excise tax collections will be \$1,591,180 ($\$24,479,689 \times 6.5\%$).
- Net worth of these companies is estimated to be equivalent to annual sales (\$163,197,926). The franchise tax rate is \$.25 per \$100 of value, so the increase in state revenue attributable to franchise tax collections will be \$407,995 [$(\$163,197,926 / \$100) \times .25$].
- The state sales tax rate is 7.0 percent, so the increase in state revenue attributable to the sales tax collections will exceed \$11,423,855 ($\$163,197,926 \times 7\%$).
- Pursuant to Tenn. Code Ann. § 67-6-103(a) (3) (A), local governments receive 4.5925 percent of all state sales tax revenue as state-shared sales tax revenue.
- An increase in local revenue exceeding \$524,641 in FY16-17($\$11,423,855 \times 4.5925\%$).
- The average local option sales tax rate is estimated to be 2.5 percent, so the increase in local revenue attributable to the sales tax collections will be \$4,079,948 ($\$163,197,926 \times 2.5\%$).
- The total increase in state sales tax revenue is \$10,899,214 ($\$11,423,855 - \$524,641$).
- The total increase in local sales tax revenue is \$4,604,589 ($\$524,641 + \$4,079,948$).

FY17-18 Tax Revenue:

- It is estimated that by FY17-18, the number of registrants in Tennessee will exceed 100,000. Retail sales of medical cannabis in FY17-18 will exceed \$307,700,000 ($100,000 \times \$3,077$).
- It is assumed that companies within the industry pay taxes on average net profit of 15 percent; the net profit on which excise tax would be paid is \$ 46,155,000 ($\$307,700,000 \times 15\%$). The state excise tax rate is 6.5 percent, so the increase in state revenue attributable to excise tax collections will exceed \$3,000,075 ($\$46,155,000 \times 6.5\%$).
- Net worth of these companies is estimated to be equivalent to annual sales (\$307,700,000). The franchise tax rate is \$.25 per \$100 of value, so the increase in state revenue attributable to franchise tax collections will exceed \$769,250 [$(\$307,700,000 / \$100) \times .25$].
- The state sales tax rate is 7.0 percent, so the increase in state revenue attributable to the sales tax collections will exceed \$21,539,000 ($\$307,700,000 \times 7\%$).
- Pursuant to Tenn. Code Ann. § 67-6-103(a) (3) (A), local governments receive 4.5925 percent of all state sales tax revenue as state-shared sales tax revenue.
- An increase in local revenue exceeding \$989,179 in FY17-18 ($\$21,539,000 \times 4.5925\%$).
- The average local option sales tax rate is estimated to be 2.5 percent, so the increase in local revenue attributable to the sales tax collections will exceed \$7,692,500 ($\$307,700,000 \times 2.5\%$).
- The total increase in state sales tax revenue exceeds \$20,549,821 ($\$21,539,000 - \$989,179$).
- The total increase in local sales tax revenue exceeds \$8,681,679 ($\$989,179 + \$7,692,500$).

Expenditures:

- The Department of Agriculture will need additional staff in order to meet the regulatory requirements of the proposed legislation which includes the licensure of producers and processors, issuance of identification cards, creation and maintenance of a registry database, and the regulation of production and processing facilities.
- The department will hire a director, administrative services assistant, administrative secretary, clerk, a training manager, 3 training officers, 3 agriculture enforcement officers, three auditors and an information systems analyst in the first year. These positions are estimated to increase recurring expenditures by \$1,187,740, which includes salaries (\$722,428), benefits (\$256,956), FICA (\$55,266), communications and networking (\$35,000), travel (\$108,090), and supplies (\$10,000). There will be an increase in one-time expenditures of \$61,385, which includes computers (\$35,385), office furniture (\$20,000), and registration card printing equipment (\$6,000).
- The Department of Health (DOH) will need additional staff in order to meet the regulatory requirements of the proposed legislation.
- DOH will hire an administrative services assistant position in the seven regional health departments and the six metropolitan health departments. These 13 positions are estimated to increase recurring expenditures by \$682,305, which includes salaries (\$427,830), benefits (\$140,782), FICA (\$32,729), communications and networking

(\$19,864), office leases (\$53,300), and supplies (\$7,800). There will be an increase in one-time expenditures of \$58,800, which includes computers (\$23,700) and office furniture (\$35,100).

- Photo identification will be provided to participants by licensed distributors and participating pharmacies, at no cost to the state.
- DOH will hire additional positions in the regions and metropolitan areas as are needed to meet the demands of the program. It is estimated that expenditures in year two and subsequent years will increase but an exact amount is dependent on the rules and regulations established by DOH and program participation.
- DOH will hire an information specialist position and a database manager position to manage the information collected and to run verifications of program participants. These positions are estimated to increase recurring expenditures by \$166,545, which includes salaries (\$116,220), benefits (\$29,234), FICA (\$8,891), communications and networking (\$2,800), office leases (\$8,200), and supplies (\$1,200). There will be an increase in one-time expenditures of \$8,600, which includes computers (\$3,200) and office furniture (\$5,400).
- There will also be a one-time increase in expenditures of \$5,000 for modifications to the controlled substance monitoring database.
- The Board of Pharmacy will be responsible for ensuring prescribers and dispensers report the dispensing of cannabis to be included in the controlled substance monitoring database and to manage licensure of the new dispensaries licensed for the program and to ensure compliance with the provisions of the program. The Board will hire a pharmacist to assist with the additional responsibilities of the Board. The position will result in an increase in recurring expenditures of \$143,328, which includes salary (\$95,652), benefits (\$20,259), FICA (\$7,317), communications and networking (\$1,400), office lease (\$4,100), travel (\$14,000), and supplies (\$600). There will be an increase in one-time expenditures of \$4,300, which includes computers (\$1,600) and office furniture (\$2,700).
- Pursuant to Tenn. Code Ann. § 4-3-1011, all health-related boards are required to be self-supporting over a two-year period. The Board of Pharmacy had an annual surplus of \$296,813 in FY12-13, an annual deficit of \$66,136 in FY13-14, and a cumulative reserve balance of \$1,160,083 on June 30, 2014.
- The members of the Medical Cannabis Advisory Committee will be reimbursed for travel (\$100), meals (\$66) and lodging (\$122).
- The Committee will meet quarterly.
- It is estimated that ten members will seek reimbursement for necessary expenses, resulting in an increase in state expenditures in FY15-16 and subsequent years of \$11,520 [10 members x (\$100 + \$66 + \$122) x 4 meetings].

Cumulative Fiscal Impact:

- The total net increase in state revenue in FY15-16 is estimated to exceed \$8,060,532 (\$87,500 + \$200,000 + \$33,950 + \$954,714 + \$244,798 + \$6,539,570).
- The total increase in state revenue in FY16-17 is estimated to exceed \$13,144,269 (\$242,000 + \$3,880 + \$1,591,180 + \$407,995 + \$10,899,214).

- The total increase in state revenue in FY17-18 and subsequent years are estimated to exceed \$24,565,026 (\$242,000 + \$3,880 + \$3,000,075 + \$769,250 + \$20,549,821).
- The total increase in local revenue is estimated to exceed \$2,762,770 in FY15-16; \$4,604,589 in FY16-17; and exceeds \$8,681,679 in FY17-18 and each year thereafter.
- The total increase in recurring revenue to the Board of Pharmacy is \$21,800.
- The total increase in expenditures to the Board of Pharmacy is estimated to be \$152,628 in FY15-16 (\$5,000 + \$143,328 + \$4,300), and \$143,328 in FY16-17 and subsequent years.
- The total increase in state expenditures in FY15-16 is estimated to be \$2,187,895 (\$11,000 + \$1,187,740 + \$682,305 + \$166,545 + \$61,385 + \$58,800 + \$8,600 + \$11,520).
- The total increase in state expenditures in FY16-17 and subsequent years, is estimated to be \$2,048,110 (\$1,187,740 + \$682,305 + \$166,545 + \$11,520).
- If there is a decrease in convictions, there would not be a significant impact on expenditures related to court proceedings or incarceration due to the legislation creating two criminal offenses which will require resources for prosecution and incarceration.
- The creation of Class B and Class C misdemeanors will not have a significant fiscal impact on local governments.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

/jdb